



contends there is no genuine issue to be tried.” See Union Carbide Corp. v. Montell N.V., 179 F.R.D. 425, 426 n.1 (S.D.N.Y. 1998) (noting that failure to submit a Local Rule 56.1 statement may “constitute grounds for denial of the motion”). Neither party submitted a Rule 56.1 statement, but rather presented new facts in the body of their briefs, supported by short deposition excerpts devoid of proper context. Even though the parties do not contest that the search took place, their briefs reveal that they still do not agree on what transpired or the nature of Sanchez’s investigation. Without factual statements, the Court is “unable to adequately assess whether there exist any genuine issues of material fact,” MSF Holding Ltd. v. Fiduciary Tr. Co. Int’l, 435 F. Supp. 2d 285, 304 (S.D.N.Y. 2006), and questions of “evidence sufficiency” abound, Johnson v. Jones, 515 U.S. 304, 313 (1995).

Second, this Court may reject a successive summary judgment motion “if the arguments in the second motion could have been raised” in the first motion. Brown v. City of Syracuse, 673 F.3d 141, 147 n.2 (2d Cir. 2012). Defendants do not contend Sanchez’s testimony that he conducted a search of Plaintiffs’ apartment pursuant to a child services investigation was unavailable at the time they moved for summary judgment. Rather, counsel asserts that he only noticed this issue “while reviewing the full record in preparation for trial.” (Defendants’ October 17, 2018 Pretrial Submissions Concerning Matters to Be Resolved In Limine, ECF No. 126, at 2 n.5.) This excuse does not suffice because “parties ought to be held to the requirement that they present their strongest case . . . when the matter is first raised.” Siemens Westinghouse Power Corp. v. Dick Corp., 219 F.R.D. 552, 554 (S.D.N.Y. 2004) (quotation marks and citation omitted). For these reasons, Defendants’ and Plaintiffs’ dueling motions for summary judgment are denied.

Defendants also move to preclude Plaintiffs from generally offering any evidence at trial concerning Defendants' disciplinary histories or lawsuits. Neither party submitted any records or testimony relating to disciplinary history or prior lawsuits. Because this Court cannot determine the probative value of any such evidence, decision is reserved.

Plaintiffs also seek to offer one instance of an unspecified Defendant's failure to report officer misconduct. Here again, no records were submitted and this Court cannot decide evidentiary questions in a vacuum. Accordingly, decision is reserved.

Defendants seek to preclude Plaintiffs from requesting a specific dollar amount of damages during summations. The Second Circuit "has repeatedly expressed its concerns about [giving the jury a specific dollar amount]" because it may "unduly tether the jury to a number that lacks any evidentiary basis." Estate of Jaquez v. Flores, 2016 WL 1060841, at \*3 (S.D.N.Y. Mar. 17, 2016) (collecting cases); see also Ramirez v. N.Y.C. Off-Track Betting Corp., 112 F.3d 38, 40 (2d Cir. 1997). For that reason, this Court grants Defendants' motion, and Plaintiffs' counsel is instructed to refrain from requesting any specific dollar amount of damages when addressing the jury.

Plaintiffs ask this Court to give an adverse inference instruction to the jury relating to Sanchez's failure to preserve his "scratch" arrest reports relating to his investigation into non-party Nicola Sims' allegations against Plaintiffs. It is unclear whether any applicable regulations or custom and practice imposed an obligation on Sanchez to preserve these reports. See Harbaki v. SanDisk Corp., 275 F.R.D. 414, 418 (S.D.N.Y. 2010). Accordingly, decision on this application is reserved until trial.

Finally, Plaintiffs have withdrawn their motion to admit the audio recording and transcript of Sims' 911 call.

For the foregoing reasons, Defendants' motion in limine and for summary judgment is denied in part and granted in part and Plaintiffs' motion in limine and for summary judgment is denied.

Dated: November 19, 2018  
New York, New York

SO ORDERED:



WILLIAM H. PAULEY III  
U.S.D.J.